

## **II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES**

### **(1) INTRODUCTION**

1. Since the last Trade Policy Review of El Salvador in 1996 several important changes have taken place in the legal framework of trade and investment. This has enabled El Salvador to advance towards a foreign trade policy that seeks to further the process of Central American integration and strengthen the trade and investment flows between El Salvador and the rest of the world. These policies are underpinned by a stable institutional and legal framework.

2. El Salvador plays an active role in the multilateral trading system; accordingly, it acceded to the Information Technology Agreement and participated in the negotiations on financial services and basic telecommunications. El Salvador also participates in several regional integration arrangements: it is a member of the Central American Common Market (CACM) and currently has free trade agreements with Chile, Mexico and the Dominican Republic. El Salvador has also signed and ratified a free trade agreement with Panama, and it is currently negotiating an agreement with Canada and participating in the negotiations of the Free Trade Area of the Americas; by January 2003, it hopes to begin negotiations on a treaty with the United States.

### **(2) FORMULATION AND IMPLEMENTATION OF TRADE POLICY**

#### **(i) General legal and institutional framework**

3. The Constitution of the Republic of El Salvador, which has been in force since 20 December 1983 with some amendments, states that the basic organs of the State (the executive, legislative and judicial branches) are independent of one another and have separate functions and powers. The executive branch is headed by a President elected by popular vote every five years, and assisted by a Vice-President and the Council of Ministers. Its main functions are to observe and enforce the Constitution and to direct foreign policy. The functions of the executive are carried out by ministers. The executive branch is also empowered, *inter alia*, to sign international treaties and conventions, submit them to the Legislative Assembly for ratification and monitor compliance therewith.

4. The legislative branch consists of a Legislative Assembly, a unicameral collegiate body of 84 deputies who are elected by suffrage every three years with the right to re-election. The main functions of the Assembly are to make laws and approve the budget. International treaties must be ratified by the Assembly, which may approve them or reject them, but may not enter reservations. The judicial branch consists of the Supreme Court of Justice, the courts of second instance and the other courts established under secondary legislation. The Supreme Court of Justice consists of 15 judges and four divisions, the Constitutional Division, the Administrative Litigation Division, the Criminal Division, and the Civil Division.

5. For purposes of political administration the Republic of El Salvador is divided into departments, in each of which the executive appoints a Governor and a Deputy-Governor. The Departments are divided in turn into Municipalities, which have the power, *inter alia*, of establishing, modifying and abolishing public taxes and levies for the implementation of specific projects.

6. Legislation may be initiated by the deputies; the President of the Republic through his ministers; the Supreme Court of Justice in areas relating to the judiciary, the functions of notaries and lawyers, and the jurisdiction and competence of the courts; and the municipal councils with regard to municipal taxes.

**(ii) Trade policy objectives and formulation**

7. The authorities pointed out that since the previous Trade Policy Review of El Salvador the main trade policy objective has continued to be to define and promote strategies that help to further the process of Central American integration and strengthen the trade and investment flows between El Salvador and the rest of the world. Accordingly, the Government has defined strategies for the negotiation and implementation of bilateral and multilateral treaties. These strategies are principally: (i) to analyse, review and adapt trade policy so as to bring it into line with the goals set and with the commitments undertaken at the Central American and international levels; (ii) to analyse, review and adapt agricultural trade policy; (iii) to coordinate with the other countries of the region measures to further Central American integration as well as to establish positions for multilateral negotiations; (iv) to ensure coordination between governmental institutions in trade areas; and (v) to consult and coordinate with the private sector.

8. The Ministry of the Economy continues to be responsible for the formulation of trade policy and for its implementation through the Vice-Ministry of the Economy by means of the Trade Policy Directorate and the Treaty Administration Directorate (DATCO). The Trade Policy Directorate is responsible for harmonizing trade policy with the other economic policies and development plans promoted by the Government; and for coordinating, conducting and following up bilateral, regional and multilateral trade negotiations. For its part, DATCO is responsible for directing and supervising the administration of the existing trade agreements, treaties and other such instruments, as well as those resulting from Central American economic integration. In this connection, DATCO is responsible for monitoring tariff concessions, market access, the application of agricultural preferences and quotas, as well as applying the trade defence mechanisms contained in the legal instruments relating to international trade.

9. The other bodies of the executive branch that are involved in trade policy formulation are the Ministry of Foreign Affairs, the Ministry of Health and Social Welfare, the Ministry of Agriculture and Livestock, the Ministry of Finance, the National Science and Technology Council (CONACYT) and any ministry or institution which needs to be consulted on a particular topic. The task of ensuring the coherence of trade policies and their consistency and compliance with the Government Plan is the responsibility of the Productivity Committee, which consists, *inter alia*, of the Ministers of the Economy, Finance, Agriculture and Foreign Affairs. The implementation of the policies is monitored by the Technical Secretariat of the Office of the President of the Republic. The Legislative Assembly does not intervene directly in trade policy formulation, but plays a decisive role since it has to ratify the bilateral, regional and multilateral treaties signed by El Salvador before they can enter into force.

10. The Permanent Mission of El Salvador in Geneva, which comes under the Ministry of Foreign Affairs, but operates in close coordination with the Ministry of the Economy, represents the country in the WTO. At the end of 2002, consideration was being given to the appointment, as of 1 January 2003, of a senior official of the Ministry of the Economy as Permanent Representative in Geneva for the exclusive purpose of handling WTO affairs.

11. With a view to formulating its trade policies the Government consults the private sector through the Productive Sector Support Office for Trade Negotiations (ODASP), in which all the business sectors are represented. It liaises with the Trade Policy Directorate through a coordinator specifically chosen for that purpose. The private bodies involved include the National Association of Private Enterprises (ANEP), the Salvadoran Association of Industrialists (ASI), the Chamber of Commerce and Industry of El Salvador, the Commission on Textiles, and the Salvadoran Exporters Corporation (COEXPORT). In addition, the Salvadoran Foundation for Economic and Social

Development (FUSADES), a private research think-tank, sometimes advises the Government on economic policy matters.

**(iii) Main trade laws and regulations**

12. The Constitution takes precedence over all other laws. In conformity with the Constitution an international treaty becomes a law of the Republic of El Salvador once it has been ratified, published in the Official Journal and has fulfilled the requirements for entry into force. A domestic law cannot amend or abrogate what has been agreed in a treaty; in the event of conflict between the treaty and a law, the treaty takes precedence. Consequently, the provisions of international treaties, as part of the legislation in force, may be invoked in the national courts.

13. Since the previous Trade Policy Review of El Salvador, changes have been introduced or new laws passed in such specific areas as customs procedures, intellectual property (see Chapter III) and investment (see Section 3 below). New amendments and modifications have also been approved with regard to several laws dealing with specific sectors, e.g. various activities of the service sector, as indicated in Chapter IV.

**(3) FOREIGN INVESTMENT REGIME**

14. Since its previous Trade Policy Review El Salvador has continued its efforts to encourage investment, especially foreign investment, with a view to contributing to the economic and social development of the country by creating employment, raising productivity, diversifying production and boosting the export of goods and services. Accordingly, El Salvador has introduced legal and institutional reforms designed to provide greater legal security for investors in the establishment and management of their investments, and to facilitate the official procedures involved by reducing formalities and setting up the National Investment Office for their administration. In particular, the Commercial Code and the Commercial Registry Law have been amended and a new Investment Law has been passed. The Law on the Superintendency of Commercial Obligations and the Law to Regulate the Practice of Accountancy complete the general legal framework with regard to investments.

15. The Investment Law (Decree No. 732 of 14 October 1999) introduced both legal and institutional changes into the investment regime. The authorities emphasized that the new law includes provisions that recognize the principles of guaranteeing and protecting investments on the basis of world "best practice") and that harmonize the criteria for the establishment and management of domestic and foreign investment. Accordingly, the Law guarantees freedom of investment and national treatment for foreign investors – except in those areas where there are restrictions under other laws – and also the protection and security of property. The free transfer of funds abroad is also guaranteed in accordance with regulations established under the previous Law. The new Law also seeks to speed up and simplify formalities and to reduce transaction costs for the investor through the use of a single window for the formalities involved in the establishment and management of investments. The authorities noted that the implementation of these new provisions entailed adjustments to the framework of commercial law in general, as well as institutional reform and modernization.

16. The Investment Law of 1999 consolidated the various existing restrictions, both in the Constitution and in secondary laws, which limited investments in the following activities and the following terms: trade, industry and the provision of services "on a small scale" are the exclusive preserve of Salvadorans by birth and of nationals of Central American countries; the subsoil belongs to the State, which may, however, grant concessions for its exploitation; the ownership of landed

properties cannot be acquired by foreigners in whose countries of origin Salvadorans do not have equal rights, except in the case of lands for industrial establishments; the maximum area of land belonging to a single natural or legal person may not exceed 245 hectares; the State has the power to regulate and supervise the public services provided by private companies and to approve the prices charged. Furthermore, investments made for the acquisition of shares of financial bodies are subject to the limitations indicated in the laws which govern such institutions (see Chapter IV.5(ii)).

17. The Investment Law also established the National Investment Office (ONI), which comes under the Ministry of the Economy. The ONI operates as a single window, where the national or foreign investor may carry out at a single place all the necessary formalities. The institutions and formalities centralized in that Office are: the National Registration Centre (single certification of an enterprise, registration of national and foreign companies, registration of accounts, registration of business establishments, registration of intellectual property rights and other registrations that involve modifications of the original registrations); the Ministry of Finance (registration of the tax identity number and the VAT number, and registration of the importer); the Salvadoran Social Security Institute (registration of the employer's identity number); the Ministry of Governance (temporary residence card, multiple visa and foreign resident's permit); and the Ministry of the Economy (registration of foreign investment). The Law obliges foreign investors to register their investments with the ONI, failing which the investment will not be guaranteed, and the investor may even be penalized by the Superintendency of Commercial Obligations. Registration is not of a discretionary nature and its purpose is mainly to establish that the investment comes from abroad, since the ONI is also responsible for the preparation of statistics on domestic and foreign investments made in El Salvador. The Law stipulates that the ONI may not make inclusion on the register of foreign investments contingent on the fulfilment of performance requirements explicitly listed in the Law, without prejudice to the provisions contained in international treaties and in laws which regulate environmental and public health matters.

18. Investment in El Salvador is also governed by bilateral, regional and multilateral agreements that give guarantees and protection to foreign investors. The Free Trade Agreements negotiated by the CACN countries with Chile (Chapter X) and the Dominican Republic (Chapter IX) and also the Free Trade Agreement of Guatemala, El Salvador and Honduras with Mexico (Chapter 14) include specific provisions with regard to investment. El Salvador is a member of the Multilateral Investment Guarantee Agency (MIGA) of the World Bank.

19. By September 2002 El Salvador had signed 23 bilateral agreements on the reciprocal promotion and protection of investments, most of which were already in force (Table II.1).

**Table II.1**  
**Reciprocal promotion and protection agreements signed by El Salvador, October 2002**

Country	Date of signing	Date of publication	Date of entry into force
France	20 September 1978	1 October 1992	12 December 1992
Ecuador	16 May 1994	19 December 1994	5 January 1996
Switzerland	8 December 1994	20 March 1995	16 September 1996
Spain	14 February 1995	5 May 1995	20 February 1996
Argentina	9 May 1996	19 September 1996	8 January 1999
Peru	13 June 1996	17 October 1996	14 December 1996
Chinese Taipei	30 August 1996	18 December 1996	15 February 1997
Chile	8 November 1996	21 March 1997	Pending notification by Chile
Germany	11 December 1997	27 March 1998	15 April 2001
Paraguay	30 January 1998	21 April 1998	9 November 1998

Country	Date of signing	Date of publication	Date of entry into force
Korea	7 July 1998	18 March 2002	25 May 2002
Nicaragua	23 January 1999	22 April 1999	8 July 2000
Morocco	21 April 1999	22 September 2000	11 April 2002
Belgium/Luxemburg	12 October 1999	10 March 2000	18 November 2002
Netherlands	12 October 1999	10 March 2000	1 March 2001
United Kingdom	14 October 1999	9 March 2000	1 December 2000
Czech Republic	30 November 1999	8 May 2000	28 March 2001
Israel	3 April 2000	31 July 2000	Pending notification by Israel
Uruguay	24 August 2000	22 November 2000	Pending notification by Uruguay
Belize	4 December 2001	18 March 2002	Pending notification by Belize
Costa Rica	21 November 2001	18 March 2002	Pending notification by Costa Rica
Finland	20 May 2002	Ratified by the Assembly on 15 August 2002. Pending publication in October 2002	-

Source: Information provided by the Salvadoran authorities.

20. As part of the Government of El Salvador's efforts to promote foreign investment, the National Commission for the Promotion of Investment in El Salvador (PROESA) was established in February 2000 as a specialized official State body responsible for promoting foreign investment in El Salvador. The ultimate objective of PROESA's work is to contribute, by generating a greater flow of foreign investment, to the creation of employment, the diversification and growth of exports, the promotion of tourism and the stimulation of technology transfer. PROESA is administered by a board of directors chaired by the Vice-President of the Republic and consisting of representatives of the public and private sectors. PROESA's work mainly consists in promoting El Salvador's image abroad, identifying potential investors and assisting them in the search for business opportunities in El Salvador, by providing them with information, contacts, and the services needed to guide them towards the decision of investing in the country. PROESA's institutional structure enables it to interact with other bodies in the public and private sectors, so as to identify the sectors in which El Salvador has a comparative advantage, seek local strategic partners as a business alternative and support the investors already established in the country. PROESA works closely with the ONI, which is responsible for providing advice on the legal regime and assisting with the formalities in the establishment of investments.

21. PROESA does not charge for the services provided; it has an annual budget of about US\$3 million, which derives from the interest generated by trust funds resulting from privatization in the telecommunications sector. With the extension of the benefits of the Caribbean Basin Initiative in 2000 (see below), PROESA initially directed its efforts towards the clothing industry. At the end of 2002 PROESA's strategy was aimed at attracting the remittances from Salvadorans abroad, traditionally used to finance consumption, towards investment. PROESA has taken on, since its establishment, part of the work of FUSADES, through its Investment Promotion Programme (PRIDEX), which made a significant contribution during the 1990s to the establishment of free trade zones and industrial premises in El Salvador.

**(4) INTERNATIONAL RELATIONS****(i) World Trade Organization**

22. The Legislative Assembly of El Salvador ratified the Protocol of Accession to the GATT in May 1991 and the Marrakech Agreement Establishing the World Trade Organization in May 1995.<sup>1</sup> El Salvador has taken advantage of the periods of transition available to the developing countries. Pursuant to the commitments entered into, El Salvador has submitted the corresponding notifications to the WTO (Table II.2.).

**Table II.2**

Notifications submitted by El Salvador under the WTO Agreements, September 2002

Article of WTO Agreement	WTO document – date (latest document if periodic)	Description of the requirement
<b>Agreement on Agriculture</b>		
Article 18.2	G/AG/N/SLV/14 - 7.8.02	Table DS.1 – Domestic support
Article 18.2	G/AG/N/SLV/11 - 7.8.02	Table MA.1 – Tariff and other quota commitments
Article 18.2	G/AG/N/SLV/8 - 28.3.00	Table MA.2 – Tariff and other quota commitments
Article 18.2	Provisional entry - 7.8.02	
Articles 10 and 18.2	G/AG/N/SLV/14 - 7.8.02	Table ES.1 – Export subsidies
Articles 5.7 and 18.2	G/AG/N/SLV/12 - 7.8.02	Table MA.5 – Special safeguard measures
<b>Anti-dumping Agreement (Agreement on Implementation of Article VI of GATT 1994)</b>		
Article 16.4	G/ADP/N/22/Add.1/Rev.8– 16.4.02	Semi annual reports
Article 16.5	G/ADP/N/14/Add.14 – 24.6.02	Competent authorities
	G/SCM/N/18/Add.14- 26.6.02	
Article 18.5	G/ADP/N/1/SLV/2 - 7.4.00	Laws and regulations
<b>Agreement on Customs Valuation (Agreement on Implementation of Article VII of GATT 1994)</b>		
Annex III (1)	G/VAL/N/4/SLV/1 – 30.5.01	Progress on implementation
Article 20.1	WT/LET/1/Rev.2 - 7.4.95	Entry into force
<b>Agreement on Preshipment Inspection</b>		
Article 5	G/PSI/N/1/Add.6 - 3.4.97	Laws and regulations
<b>Agreement on Rules of Origin</b>		
Article 5 and Annex II (4)	G/RO/N/30 - 4.12.00	Changes in preferential and non-preferential rules
Article 5.1 and Annex II (4)	G/RO/N/11 - 20.8.96	Existing preferential and non-preferential rules
Article 5.1 and Annex II (4)	G/RO/N/10 - 29.4.96	Existing preferential and non-preferential rules
<b>Agreement on Safeguards</b>		
End of investigation	G/SG/N/9/SLV/1 - 15.2.01	Safeguard investigation terminates without imposition of safeguard measures
	G/SG/N/9/SLV/2 - 13.6.01	
	G/SG/N/9/SLV/3 - 5.11.01	
Article 12.1(a)	G/SG/N/6/SLV/1 - 27.1.00	Initiation of investigation and reasons for it
	G/SG/N/6/SLV/1/Suppl.1 - 16.3.00	
	G/SG/N/6/SLV/2 - 18.7.00	
	G/SG/N/6/SLV/1/Suppl.2 - 20.10.00	
	G/SG/N/6/SLV/3 - 04.12.00	
	G/SG/N/6/SLV/2/Suppl.1 - 22.12.00	

<sup>1</sup> See WTO (1996), Trade Policy Review of El Salvador (Chapter II.1).

Article of WTO Agreement	WTO document – date (latest document if periodic)	Description of the requirement
Article 12.6	G/SG/N/6/SLV/1/Suppl.3 - 29.1.01	Notification of laws, regulations and administrative procedures
	G/SG/N/6/SLV/1/Suppl.4 - 19.3.01	
	G/SG/N/6/SLV/2/Suppl.2 - 2.4.01	
	G/SG/N/6/SLV/3/Suppl.1 - 15.5.01	
	G/SG/N/6/SLV/3/Suppl.2 - 2.8.01	
	G/SG/N/1/SLV/2 - 20.8.96	Incorporation of the Agreement into domestic legislation
	G/SG/N/1/SLV/1 - 14.3.95	
<b>Agreement on the Application of Sanitary and Phytosanitary Measures</b>		
Article 7, Annex B	G/SPS/N/SLV/45 - 2.5.02	Transparency of the regulations
	G/SPS/N/SLV/38/Add.1 - 2.5.02	
<b>State Trading (Understanding on the Interpretation of Article XVII)</b>		
Article XVII (4)(a)	G/STR/N/6/SLV - 27.2.01	Annual state trading activities
<b>Agreement on Subsidies and Countervailing Measures</b>		
Article 25.1	G/SCM/N/71/SLV - 31.12.01	Annual report on subsidies
	G/SCM/N/71/SLV/Suppl.1 - 28.2.02	
Article 25.11	G/SCM/N/68/Add.1 - 22.1.01	Semi-annual report on countervailing actions
Article 25.12	G/SCM/N/18/Add.5 - 28.5.97	Competent authorities
Article 32.6	G/SCM/N/1/SLV/2 - 7.4.00	Incorporation of the Agreement into domestic legislation
Article 27.4	G/SCM/N/74/SLV/2 - 31.12.01	Subsidies
<b>Agreement on Technical Barriers to Trade</b>		
Annex 3(C)	G/TBT/CS/N/61 - 4.12.96	Acceptance of the Code of Good Practice on voluntary standards
Article 2.10	G/TBT/NOTIF.95.324 - 2.11.95	Technical regulations proposed and adopted
	G/TBT/NOTIF.99.505 - 6.10.99	
Article 2.9	G/TBT/N/SLV/12 - 14.3.02	Technical regulations proposed and adopted
Article 10.6	G/TBT/NOTIF.00/102 – 22.2.00	Technical regulations proposed and adopted
	G/TBT/NOTIF.00/103 – 22.2.00	
	G/TBT/NOTIF.99.224 – 28.4.99	
	G/TBT/N/SLV/6 - 11.10.01	
<b>Agreements on Textiles and Clothing</b>		
Articles 2.8 (a) and 2.11	G/TMB/N/236/Add.1 - 19.6.97	List of products to be included in the second stage of the process of integration
	G/TMB/N/236 – 31.01.97	
	G/TMB/N/236/Corr.1 - 8.10.97	
	G/TMB/N/397 - 5.4.01	
	G/TMB/N/397/Corr.1 - 7.12.01	Programme of integration for the second and third stages
Articles 2.6 and 2.7 (b)	G/TMB/N/52 - 1.3.95	List of products to be included in the first stage of the process of integration
Article 6.1	G/TMB/N/8 - 8.2.95	Reservation of the right to apply the safeguard mechanism the
Article 6.1	G/TMB/N/199 - 24.7.96	Memorandum of Understanding between the United States and El Salvador
<b>Agreement on Trade-Related Aspects of Intellectual Property Rights</b>		
Article 63.2	IP/N/6/SLV/1 - 7.6.00	Notification of laws and regulations
Article 69	IP/N/3/Rev.2/Add.2 - 17.10.96	Notification of contact points
<b>General Agreement on Trade in Services</b>		
Article III (4) or IV (2)	S/ENQ/25 - 17.10.96	Notification of points of contact
Article VII (4)	S/C/N/17 - 17.10.96	Recognition

Article of WTO Agreement	WTO document – date (latest document if periodic)	Description of the requirement
<b>Article XXVIII of GATT 1994</b>		
Article XXVIII (5)	G/MA/29 - 06.01.97	Reservation of the right to modify the schedule

Source: WTO Secretariat

23. El Salvador participated in the negotiations on basic telecommunications and financial services within the framework of the GATS and accepted the Fourth and Fifth Protocols annexed to the GATS. The Fourth Protocol was signed on 15 April 1997 and ratified by Legislative Decree No. 1031 of 29 April 1997, published in Official Journal No. 92 of 22 May 1997. The Fifth Protocol was signed on 27 February 1998 and ratified by Legislative Decree No. 613, published in Official Journal No. 343 of 26 May 1999, (see chapter IV.5). Similarly, since 1997 El Salvador has participated in the Committee of Participants on the Expansion of Trade in Information Technology Products and in the Information Technology Agreement adopted at the Ministerial Conference held in Singapore in December 1996. However, by mid-2002 the Agreement had still not entered into force in El Salvador since it was still in the process of being ratified by the Legislative Assembly.<sup>2</sup>

24. El Salvador decided, pursuant to Article XIII of the Marrakesh Agreement, not to apply the multilateral trade agreements between El Salvador and the People's Republic of China.<sup>3</sup> The authorities noted that in practice this does not exclude China from most-favoured-nation treatment, although it is not guaranteed.

25. During the preparations for the Ministerial Conference in Seattle, El Salvador, together with Cuba, the Dominican Republic, Honduras and Nicaragua, requested the inclusion in the negotiations on agriculture and services of various items relating, *inter alia*, to improving market access for the main agricultural exports of the developing countries, granting the developing countries flexibility and facilities so as to allow them to use domestic support in the agricultural sector; and improving market access for services of those sectors and modes of supply that are of benefit to the developing countries, particularly as concerns the movement of natural persons.<sup>4</sup> Similarly, together with the Dominican Republic and Honduras, El Salvador presented a proposal in favour of a more specific treatment of tourism services for the prevention of anti-competitive practices in the framework of the GATS.<sup>5</sup>

26. At the Ministerial Conference in Doha in 2001 El Salvador drew attention to the importance of free trade zones for its economy and the need to extend, in conformity with Article 27.4 of the Agreement on Subsidies and Countervailing measures (on special and differential treatment), the period of transition for free zones.<sup>6</sup> The Ministerial Conference directed the Committee on Subsidies

<sup>2</sup> Document G/IT/1/Rev.18 of 20 April 2001.

<sup>3</sup> Document WT/L/429 of the WTO, 7 November 2001.

<sup>4</sup> Document WT/GC/W/120 of the WTO, 4 December 1998.

<sup>5</sup> Document WT/GC/W/372 of the WTO, 14 October 1999.

<sup>6</sup> Document WTMIN(01)/ST/77 of the WTO, 11 November 2001.



and Countervailing Measures to extend the transition period, under the rubric of that article, for certain export subsidies provided by the Members.<sup>7</sup>

27. In the current WTO negotiations on agriculture El Salvador, together with other developing countries, has submitted proposals on special and differential treatment and on the "green box" measures. The first proposal emphasizes the importance of special and differential treatment for the developing countries with regard to agricultural policy and calls for the creation of a development box with policy instruments that aim to protect and enhance domestic food production capacity, particularly in key staples; increase food security and food accessibility, especially for the poorest countries; provide or at least sustain existing employment for the rural poor; protect farmers who are already producing an adequate supply of key agricultural products from cheap imports; provide flexibility so as to give the necessary support to small farmers, especially in terms of increasing their production capacity and competitiveness. The instruments proposed for the development box include: specifically identifying the products or sectors that benefit from such domestic support and submitting them to the disciplines of the Agreement on Agriculture; allowing the adjustment of bound tariff levels, particularly in those cases in which it has been established that cheap imports are destroying or threatening domestic producers; and increasing the de minimis domestic support level from 10 to 20%; prohibiting developed countries from the use of the special safeguard clause; prohibiting all forms of dumping; and eliminating all forms of export subsidies (direct or indirect) by the developed countries.<sup>8</sup>

28. The second proposal indicates various problems and shortcomings of the green box and recommends collapsing all domestic support categories into one "general subsidies" box with a set of criteria to define which programmes would be allowed within this one box. Furthermore, it is proposed that the due restraint clause protecting green box subsidies from challenge should be a special and differential treatment provision that will protect developing countries in their efforts to increase food security, ensure rural employment and increase domestic production capacity.<sup>9</sup>

29. El Salvador has participated in a limited number of dispute settlement cases, always as the complainant or a third party (Table II.3).

**Table II.3**  
WTO dispute settlement cases in which El Salvador is or was involved, 1996-September 2002

Case	Brought against/by	Measures adopted (date)	WTO Document
<b>Cases with El Salvador as complainant</b>			
Measures Affecting Textiles and Apparel Products (II)	United States/EU in conjunction with El Salvador, Dominican Republic, Hong Kong, China, Pakistan, Honduras, Japan, Switzerland and India	Request for consultations (November 1998); notification of mutually agreed solution (July 2000)	WT/DS151/1-10
Safeguard Measures on Sugar	Chile/Colombia in conjunction with El Salvador, Cuba, Guatemala, Nicaragua and Costa Rica	Request for consultations (March 2001)	WT/DS/228/1-6

<sup>7</sup> Document WT/MIN(01)17 of the WTO, 20 November 2001.

<sup>8</sup> Document G/AG/NG/W/13 of the WTO, 23 June 2000.

<sup>9</sup> Document G/AG/NG/W/14 of the WTO, 23 June 2000.

<b>Cases with El Salvador as third party</b>			
Import prohibition of Certain Shrimp and Shrimp Products	United States/India, Malaysia, Pakistan and Thailand	Request for consultations (October 1996); adoption of the Panel report and of the Appellate Body report (November 1998); distribution of the status report (July 1999); recourse by Malaysia to Article 21.5 of the DSU (October 2000); request for extension of the time-period set for the application of the recommendations and resolutions (March 2001); distribution of the Panel report (June 2001); notification of appeal (July 2001); adoption of the Appellate Body report (November 2001) (El Salvador is not a party)	WT/DS58/1-23&Add.1-4 WT/DS58/R WT/DS58/RW WT/DS/AB/R WT/DS58/AB/RW
Anti-Dumping Investigation Regarding Portland Cement from Mexico	Guatemala/Mexico	Request for consultations (October 1996); distribution of the Panel report (June 1998); notification of appeal (August 1998); adoption of the Panel report and of the Appellate Body report (November 1998)	WT/DS60/1-12 WT/DS60/R WT/DS60/AB/R
Definitive Anti-Dumping Measures on Grey Portland Cement from Mexico	Guatemala/Mexico	Request for consultations (January 1999); distribution of the report of the Panel (October 2000); adoption of the report of the Panel (November 2000)	WT/DS156/1-4 WT/DS156/R

Source: WTO Secretariat

## (ii) Preferential agreements

30. Since its last Trade Policy Review, free trade agreements have continued to take on increasing importance for El Salvador's trade relations. In addition to the CACM, El Salvador has signed new agreements with Chile, the Dominican Republic, Mexico and Panama. The regional and bilateral preferential agreements have become important factors in El Salvador's trade liberalization, although their increasing number has been a cause for concern because of their administrative cost, their effect on the transparency of market access and the possible effects of trade diversion.

31. The authorities pointed out that El Salvador has not so far been the subject of a complaint by any trading partner, either on the basis of the provisions of the CACM or of the dispute settlement mechanisms contained in the agreements signed with Chile, Mexico and the Dominican Republic; nor has it made use of these mechanisms as a complainant.

### (a) Central American Common Market (CACM)

32. El Salvador has been a member of the Central American Common Market (CACM) since 1961. Its other members are Costa Rica, Guatemala, Honduras and Nicaragua. Since the previous Review of El Salvador, the process of Central American integration has undergone major changes, in particular with the ratification and entry into force of the Guatemala Protocol to the General Treaty on Central American Economic Integration (in August 1995), which defines the objectives, principles and measures to achieve economic union, the goal set by the Central American presidents as a complement to the Tegucigalpa Protocol.

33. With a view to enhancing the effectiveness of the free trade zone, most of the barriers to interregional trade have been eliminated. In 2002 the great majority of products originating in the region enjoyed a zero tariff. In El Salvador's bilateral trade with each of the other countries there are exceptions to the free trade agreement for some products, such as roasted and unroasted coffee, cane sugar, ethyl alcohol, wheat flour, distilled alcoholic beverages and petroleum products (see

Chapter III.2).<sup>10</sup> In addition, in accordance with the commitments established in the Guatemala Protocol to the General Treaty on Central American Economic Integration, El Salvador and Guatemala have, since 1996, encouraged efforts to establish a customs union between their countries. Subsequently, in June 2000, Honduras and Nicaragua joined these efforts, leading to the harmonization at 71% of the common external tariff between the five CACM countries and the elimination of various non-tariff barriers to interregional trade.

34. Despite this, however, a study by the Export Processing Centre of El Salvador (CENTREX) has noted that interregional trade has been restricted in recent years by the continuing existence of certain non-tariff barriers.<sup>11</sup> The Permanent Secretariat of the General Treaty on Central American Economic Integration (SIECA) has also indicated a number of measures that are contrary to interregional free trade, which, in the case of the obstacles to access to the Salvadoran market, include prohibitions on the import of pigs and coconut fruit from Guatemala, for sanitary and phytosanitary reasons, respectively.<sup>12</sup> The Salvadoran authorities have pointed out that considerable progress has been achieved in eliminating the existing barriers to interregional trade, and 31 December 2002 has been set by presidential mandate as the final date for such elimination. Other objectives include the establishment of a common external trade policy and the elimination of inter-Central American frontier posts by 31 December 2003.

35. Since the previous Trade Policy Review of El Salvador regional trade rules have been brought into line with the commitments made by each of the Central American countries in the WTO. At the end of 2002 new rules had been approved in the following areas: origin of goods; unfair trade practices; safeguard measures; standards-related measures, metrology and authorization procedures; and sanitary and phytosanitary measures and procedures. With regard to customs valuation a Protocol was adopted to Annex "B" of the Convention on the Central American Tariff and Customs Regime, by which Central American legislation on the customs valuation of goods was expressly abrogated. This Protocol was in the process of being ratified at the end of October 2002.

36. In addition, in March 2002, the regulatory part of a Central American Treaty on Investment and Trade in Services was signed; in September 2002 the lists of reservations to that agreement were being negotiated. Similarly, on 27 February 2002 an amendment to the Tegucigalpa Protocol was signed, opening the way for the establishment of a trade dispute settlement mechanism in the region. That amendment was ratified by El Salvador by Legislative Decree No. 939 of 28 July 2002, which was published in Official Journal No. 152 of 20 August 2002.

37. Within the framework of their policy on foreign trade relations the CACM member countries have continued to sign agreements with trading partners in the Western hemisphere, including the Dominican Republic, Chile and Panama.

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<sup>10</sup> The bilateral restrictions on petroleum products and distilled alcoholic beverages only apply to trade with Honduras.

<sup>11</sup> Export Processing Centre (2000), *Barreras no arancelarias que limitan el comercio regional* (Non-tariff barriers that restrict regional trade), *Gerencia Internacional*.

<sup>12</sup> Permanent Secretariat of the General Treaty on Central American Economic Integration (SIECA), *Medidas Contrarias al Libre Comercio Intearregional*, (Measures contrary to interregional free trade), Guatemala, 2 October 2002.

- (b) Free trade agreement between Guatemala, Honduras, El Salvador, Nicaragua and Costa Rica, and the Dominican Republic.

38. The free trade agreement signed by Guatemala, Honduras, El Salvador, Nicaragua and Costa Rica with the Dominican Republic was ratified by the Legislative Assembly of El Salvador on 27 May 1999 and by the Dominican Republic on 15 March 2001; it came into force in both countries on 4 October 2001. The agreement covers the following areas: market access for goods; rules of origin; customs procedures; safeguard measures; unfair practices; sanitary and phytosanitary measures; technical regulations; investment, trade in services; air transport; telecommunications; and dispute settlement.

39. The great majority of imports from the Dominican Republic (around 98% of the tariff universe) are tariff-free; the tariff average is 0.3% (Table III.2). A limited number of products do not enjoy free access, in particular, meat and edible offal, shrimps, milk, onions, beans, coffee, rice, wheat flour, animal or vegetable fats or oils, cane sugar, tomato concentrate, beer made from malt, ethyl alcohol, tobacco and cigarettes, petroleum products, and paper.<sup>13</sup>

- (c) Free trade agreement between Guatemala, Honduras, El Salvador, Nicaragua and Costa Rica, and Chile

40. The free trade agreement that Guatemala, Honduras, El Salvador, Nicaragua and Costa Rica signed with Chile was ratified by the Legislative Assembly of El Salvador on 4 October 2001 and by Chile on 24 January 2002; it came into force on 1 June 2002. The agreement covers the following areas: market access for goods; rules of origin; customs procedures; safeguard measures; unfair practices; sanitary and phytosanitary measures; technical regulations; investment; trade in services; air transport; telecommunications; competition policy; government procurement; and dispute settlement.

41. The tariff concessions granted to imports originating from Chile cover practically all the tariff universe (95.6% of the tariff lines). The agreement includes a tariff reduction programme spread over a period of 16 years beginning from the entry into force of the free trade agreement for a limited number of products from Chile, but a greater number of products from El Salvador. Chile granted immediate tariff-free access to products representing 83.4% of the lines, while El Salvador did so for 63%.<sup>14</sup> Consequently, in June 2002 the average preferential tariff applied to Chilean imports was 4.3 % and continued to be relatively close to the average MFN tariff. Most of the Chilean products that do not enjoy preference are agricultural products, in particular those products classified under the following headings: live animals (Chapter 01 of the Harmonized System); meat and edible offal (Chapter 02 of the HS); and tobacco and manufactured tobacco substitutes (Chapter 24 of the HS). Nor do imports of some iron and steel products (Chapter 72 of the HS) or of arms and ammunition (Chapter 93 of the HS) enjoy preference as compared with MFN treatment.

- (d) Free trade agreement between Guatemala, Honduras, El Salvador, Nicaragua and Costa Rica, and Panama

42. On 6 March 2002 Guatemala, Honduras, El Salvador, Nicaragua and Costa Rica signed a free trade agreement with Panama. The agreement was ratified by El Salvador on 3 October 2002 and is now going through the process of ratification in Panama. The agreement covers the following areas:

<sup>13</sup> See WTO (2002), Trade Policy Review of the Dominican Republic (Chapter II.3).

<sup>14</sup> Information provided by the Ministry of the Economy of El Salvador.

market access for goods; rules of origin; customs procedures; safeguard measures; unfair practices; sanitary and phytosanitary measures; technical regulations; investment; trade in services; financial services; telecommunications; competition policy; government procurement; intellectual property; and dispute settlement.

43. Pending the entry into force of the new agreement, El Salvador and Panama are applying the Preferential Trade Agreement signed on 11 August 1970.<sup>15</sup> The agreement has a coverage of 83.3%, most of which is of immediate effect and the rest spread over ten years. On the basis of past practice, it established a free trade regime, a preferential trade regime and a regime of import and export quotas and controls for natural or manufactured products originating on the territories of both countries. Products subject to the first regime are exempt from the payment of import and export duties and include most of the tariff headings. The products subject to the second regime enjoy tariff preference, calculated as a percentage of the MFN tariff. These products include some juices and preserves, some food preparations, specific types of clothing and footwear, and certain electrical machines. In addition, import quotas were established for a limited number of products, such as some types of soup, aluminium profiles, aluminium tubes, wires and cables for the transmission of electricity, and brooms. Finally, some products such as meat, vegetables and foodstuffs, paints, hides and some building materials are subject to import controls and require prior authorization.

(e) Free trade agreement between El Salvador, Guatemala and Honduras, and Mexico

44. The free trade agreement between El Salvador (as part of the Northern Triangle together with Guatemala and Honduras) and Mexico was signed in May 2000 and came into force on 15 March 2001. The agreement covers the following areas: market access for goods; customs procedures; rules of origin; technical regulations; sanitary and phytosanitary measures; contingency measures; safeguards; investment; trade in services; intellectual property; and dispute settlement. The tariff reduction programme is asymmetrical and should terminate at the end of 11 years. Over 65% of the exports from El Salvador, Guatemala and Honduras and around 50% of the Mexican exports of industrial products have benefited since the beginning from tariff-free treatment; by 2005, 80% and 65% of exports respectively will enjoy that treatment. The free trade agreement includes a special safeguard for sensitive agricultural products. In 2002 the average tariff rate applied to products from Mexico was 5.1%, i.e. over two percentage points below the MFN average (Table III.2).

(f) Partial scope agreements within the framework of LAIA

45. Within the framework of the Latin American Integration Association (LAIA), El Salvador has two partial scope agreements on the basis of Article 25 of the Treaty of Montevideo, one with Venezuela (AAP No. 27) and the other with Colombia (AAP No. 8).

(g) Trading arrangements in the process of negotiation

46. El Salvador is participating in the negotiations to establish the Free Trade Area of the Americas (FTAA), an initiative which was launched in December 1994 with a view to gradually eliminating the barriers to the trade in goods and services in the western hemisphere, and which is due to be concluded by 2005. In addition, in September 2002 El Salvador was negotiating, together with its CACM partners, a trade agreement with Canada.<sup>16</sup> Furthermore, it is hoped that by January 2002 negotiations will have begun on a free trade agreement between the United States and Guatemala,

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<sup>15</sup> Legislative Decree No. 64, published in Official Journal No. 151 of 21 August 1970.

<sup>16</sup> Costa Rica had already signed a free trade agreement with Canada on 23 April 2001.

El Salvador, Honduras, Nicaragua and Costa Rica. Finally, El Salvador and Chinese Taipei are studying the possibility of initiating negotiations to sign a free trade agreement between the two countries.

### (iii) Other agreements

47. In addition to the integration programmes already negotiated, El Salvador benefits from unilateral concessions granted by several developed countries, in particular under the Generalized System of Preferences (GSP). In the case of the European Union, in addition to the general regime of the GSP, El Salvador, together with the other countries of Central America and the ANDEAN Community, enjoys a special regime, known as the "special arrangements to combat drug production and trafficking", for a specific number of agricultural and industrial products, as an incentive for action to combat drug trafficking. This regime expires on 31 December 2004.

**Table II.4**  
Salvadoran exports under the CBI and the GSP, 1996-2001

	1996	1997	1998	1999	2000	2001
Total exports (millions of US\$)	1,788	2,426	2,441	2,510	2,941	2,865
Under the CBI (%) <sup>a</sup>	12.5	10.9	9.7	9.4	10.5	7.9
Under the GSP (%) <sup>b</sup>	17.8	16.1	9.5	7.2	5.4	3.8

a Exports to the United States.

b The destination countries change from year to year; however, the main destinations were the European Union, Canada and Switzerland.

Source: WTO Secretariat on the basis of information provided by the Salvadoran authorities.

48. Similarly, since 1983 the United States has granted unilateral preferences to El Salvador and other countries under the Caribbean Basin Initiative (CBI). The coverage of products was extended in 2000 by means of a new law known under its English acronym as the CBTPA, which recognizes the importance for the CBI countries of exports of clothing to the United States (Table II.4).

49. In May 2000, the United States passed the Trade and Development Act 2000, which extended the benefits of the CBI. With the passing of that Act, El Salvador and the other countries in the region enjoy preferential access to the United States market for some products which had in the past been excluded from the Initiative. The measure grants tariff benefits up to September 2008 or until the FTAA enters into force. The extension of these advantages means the elimination of duties on added value paid on textile products made in the region with cloth from the United States. In addition, free trade is permitted in a number of clothing items made from regional cloth using United States coarse thread up to an annual ceiling of 250 million square metres of local cloth, as well as T-shirts and singlets made with cloth from the region using United States coarse thread up to a ceiling of 4.2 million dozen. These ceilings will be increased by up to a maximum of 16% a year until 2004. After that, the position will be reviewed to determine the percentage growth.

50. The CBI benefits were modified in 2002 by the Trade Act of that year. The authorities noted that these modifications resulted in an extension of the quota, in the square metre equivalent, for regional cloth made from United States coarse thread and for T-shirts and singlets made from United States coarse thread.

51. In 2001, the main products exported through the CBI were coffee, sugar, cotton towels, shrimps, toilet paper, candles, cane molasses, beer, paper bags, aluminium kitchen articles and ethnic products. The results of the preferences granted through the CBI do not appear to have come up to

expectations, particularly in the textile and clothing sector. The authorities noted that, when the enlargement of the CBI was approved, it was expected that on the basis of increased preferences the exports of that sector would amount to US\$4,000 million in 2003, and that the added value produced by the sector would amount to US\$1,300 million. However, they have pointed out that these figures should be adjusted in the light of the restrictions introduced by the Trade Act of 2002 with regard to the processes that generate added value and the finishing processes. In other areas, such as the export of footwear or tuna fish, the preferences are considered to have had a more positive impact.